



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

NOTICE OF NON-COMPLIANCE

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

JUN 5 2012

Mr. Kevin Dirks
Director of Corporate Safety
Russell Stover Candies, Inc.
4900 Oak Street
Kansas City, Missouri 64112-2702

Re: EPCRA case number 03-VA-2012-005

Dear Mr. Dirks:

On December 6, 2011, the United States Environmental Protection Agency, Region III (EPA), conducted an inspection of your facility located at 23361 Business Center Court in Ruther Glen, Virginia pursuant to the Emergency Planning and Community Right-to-Know Act (EPCRA) and the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). Specifically, the inspection evaluated your compliance with Section 304 of EPCRA, 42 U.S.C. § 11004, and Section 103 of CERCLA, 42 U.S.C. § 9603, regarding two releases involving anhydrous ammonia, which occurred on January 11-12, 2011 and March 1, 2011. In addition, the inspection evaluated your compliance with the emergency planning and chemical reporting requirements of EPCRA Sections 302, 303, 311, and 312, 42 U.S.C. §§ 11002, 11003, 11021, 11022.

Based on our inspection and subsequent evaluation, EPA has determined that your facility may be in violation of Sections 311 and 312 of EPCRA, 42 U.S.C. §§ 11021 and 11022. The specific violations are outlined later in this letter.

The implementing regulations of EPCRA are the Emergency Planning and Notification Regulations found at 40 C.F.R. Part 355 and the Hazardous Chemical Reporting: Community Right-to-Know Regulations found at 40 C.F.R. Part 370. Civil penalties for violating any requirement of 40 C.F.R. Part 355 are governed by Section 325(b)(1-2) of EPCRA, 42 U.S.C. § 11045(b)(1-2). Civil penalties for violating any requirement of 40 C.F.R. Part 370 are governed by Section 325(c)(1-3) of EPCRA, 42 U.S.C. § 11045(c)(1-3).

This notice is being sent to your attention so that certain violations can be addressed by the person responsible for compliance with EPA's Hazardous Chemical Reporting: Community Right-to-Know Regulations (40 C.F.R. Part 370), which requires the submission of information



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concerning hazardous chemicals stored onsite above thresholds to specific reporting agencies within designated timeframes.

In determining the amount of the civil penalty to be assessed, EPA's penalty policy, the *Enforcement Response Policy for Sections 304, 311, and 312 of the Emergency Planning and Community Right-to-Know Act and Section 103 of the Comprehensive Environmental Response, Compensation, and Liability Act*, dated September 30, 1999, provides that the factors to be considered by statute are: (1) the nature, extent, gravity, and circumstances of the violation; (2) the ability of the violator to pay; (3) any history of prior violations; (4) the degree of culpability involved; (5) the economic benefit to the violator, if any, resulting from the violation; and (6) any other matters as justice may require. EPA's policy also considers the following additional factors to arrive at an appropriate penalty: (7) size of business; (8) attitude; (9) Supplemental Environmental Projects (SEPs); and (10) voluntary disclosure.

Although we are not now proposing a civil penalty, EPA reserves the right to do so in the future. Therefore, failure to come into compliance with 40 C.F.R. Part 370 within the timeframe specified in this letter may result in the Agency pursuing a penalty in accordance with EPCRA for deficiencies identified in this notice.

Instead of proposing a civil penalty at this time, EPA is hereby noticing you of the violations found during its inspection, and requires that you correct the following violations within **thirty (30) days** of your receipt of this notice:

1. **Violation of 40 C.F.R. §§ 370.30, 370.32-33:** for failure to submit Material Safety Data Sheets (MSDSs) for all hazardous chemicals present at your facility that met or exceeded their applicable threshold levels. Prior to submitting calendar year 2010 Tier II Reports to the State Emergency Response Commission (SERC), the Local Emergency Planning Committee (LEPC), and local fire department, it appears the facility did not submit MSDS information to these agencies for the anhydrous ammonia and sulfuric acid stored onsite, as required. Please reply to this Notice of Noncompliance with a description of the procedures that will be instituted at the facility to ensure that MSDSs are submitted in a timely manner if and when new hazardous chemicals are brought onsite in quantities subject to this part.
2. **Violation of 40 C.F.R. § 370.45(a):** for failure to submit the required inventory information on or before March 1. The facility did not submit Tier II Reports for calendar years 2008 and 2009 to the SERC, LEPC, or local fire department with jurisdiction over the facility. During these years the facility stored anhydrous ammonia and sulfuric acid onsite in quantities greater than their applicable threshold levels. Please reply to this Notice of Noncompliance with evidence that Tier II Reports for calendar years 2008 and 2009 were submitted to the SERC, LEPC, and local fire department.

Also, provide a description of the procedures that will be instituted at the facility to ensure that future reports are submitted annually by March 1.

Please submit the information listed in Items 1 and 2 above for the facility in response to this notice within **thirty (30) days** to the following address:

**U. S. ENVIRONMENTAL PROTECTION AGENCY
REGION III, ANNE GILLEY
OIL AND PREVENTION BRANCH (3HS61)
1650 ARCH STREET
PHILADELPHIA, PENNSYLVANIA 19103-2029**

Any information forwarded will be maintained in this office for a period of five (5) years along with a copy of this notice, the inspection report or other documents pertinent to this case. Please refer to the above case number in any correspondence.

For the most recent information concerning EPCRA, please consult EPA's national EPCRA website at: <http://www.epa.gov/emergencies/content/epcra/index.htm>.

Failure to timely submit the required MSDS and annual inventory information to the SERC, LEPC, and local fire department with jurisdiction over the facility constitutes violations of Sections 311 and 312 of EPCRA, 42 U.S.C. §§ 11021 and 11022, which can result in civil administrative penalties of up to \$37,500 per violation for violations occurring after January 12, 2009. Although you are receiving a Notice of Noncompliance for these violations at this time, any further violations of EPCRA may result in the issuance of a Civil Administrative Complaint for the assessment of penalties.

Should you have any questions concerning this matter, please contact Anne Gilley, EPCRA Coordinator, at (215) 814-3293.

Sincerely,



Karen Melvin, Associate Division Director
Office of Enforcement
Hazardous Site Cleanup Division

cc: Ms. Nichelle McDaniel
Virginia Department of Environmental Quality

Virginia Emergency Response Council
629 East Main Street
Richmond, VA 23219